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**FILED**  
DISTRICT COURT OF GUAM

JUL 24 2006 *res*

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CLERK OF COURT

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20 Counterclaimant S.J. GARGRAVE SYNDICATE 2724

21  
22 IN THE DISTRICT COURT OF GUAM

23 TERRITORY OF GUAM

24 UNITED STATES OF AMERICA,

25 Plaintiff,

26 vs.

27 MARWAN SHIPPING & TRADE CO., FIVE  
28 SEAS SHIPPING CO., LLC, and S.J.  
29 GARGRAVE SYNDICATE 2724, *in*  
30 *personam*,

31 Defendants.

32 S.J. GARGRAVE SYNDICATE 2724,

33 Cross-Claimant,

34 vs.

35 MARWAN SHIPPING & TRADE CO., FIVE  
36 SEAS SHIPPING CO., LLC, UNITED  
37 STATES OF AMERICA,

38 Cross-Defendants.

Civil Case No.: 06-00011

**THIRD-PARTY COMPLAINT OF S.J.  
GARGRAVE SYNDICATE 2724**

Complaint Date: April 19, 2006  
Trial Date: None Set

1 S.J. GARGRAVE SYNDICATE 2724,

2 Third-Party Plaintiff ,

3 vs.

4 NAVIGATORS PROTECTION &  
5 INDEMNITY; AL-BUHALERA,

6 Third-Party Defendants.  
7

8 S.J. GARGRAVE SYNDICATE 2724 (hereinafter "Gargrave"), an unincorporated  
9 association, for a Third-Party Complaint against NAVIGATORS PROTECTION &  
10 INDEMNITY, a corporation, and AL-BUHALERA, a corporation (both hereinafter collectively  
11 the "Third-Party Defendants"), alleges as follows:

12 **JURISDICTION**

13 1. This is a case of Admiralty and Maritime jurisdiction, as hereinafter more fully  
14 appears; it is an Admiralty and Maritime claim within the meanings of Rules 9(h) and 14(c) of the  
15 Federal Rules of Civil Procedure. This Court has jurisdiction pursuant to 28 U.S.C. § 1333(1).  
16 This Court also has ancillary and/or pendent jurisdiction over the matters set forth herein.

17 **VENUE**

18 2. Venue is appropriate in this judicial district pursuant to 28 U.S.C. § 1391(b), in  
19 that a substantial part of the events or omissions giving rise to the claims herein occurred in this  
20 judicial district.

21 **PARTIES**

22 3. Plaintiff Gargrave is an unincorporated association organized and existing under  
23 the laws of the United Kingdom, with its principal place of business at London, England. At all  
24 relevant times, Gargrave was an insurer in the business of writing marine insurance, including  
25 issuing Certificates of Financial Responsibility (hereinafter "COFRs").

26 4. Gargrave is informed and believes that third-party defendant NAVIGATORS  
27 PROTECTION & INDEMNITY (hereinafter "Navigators"), at all times mentioned herein, was  
28 and now is a corporation duly organized and existing under the laws of the United Kingdom, with

1 its principal place of business at London, England. Navigators is an insurer in the business of  
2 underwriting marine insurance, particularly protection & indemnity (hereinafter "P&I") insurance  
3 and excess P&I insurance. Gargrave is informed and believes that at all relevant times,  
4 Navigators was the excess P&I insurer for the M/V AJMAN 2.

5 5. Gargrave is informed and believes that third-party defendant Al-Buhalera, at all  
6 times mentioned herein, was and now is a corporation duly organized and existing under the laws  
7 of the United Arab Emirates. Al-Buhalera is an insurer, engaged in underwriting marine  
8 insurance risks, particularly P&I risks at the primary layer. Gargrave is informed and believes  
9 that at all relevant times, Al-Buhalera was the primary P&I insurer for the M/V AJMAN 2.

10 6. Plaintiff UNITED STATES OF AMERICA (hereinafter "United States") has filed  
11 a Verified Complaint of the United States herein (hereinafter the "Verified Complaint"), which is  
12 incorporated in this Third-Party Complaint by reference, naming Gargrave as a defendant, among  
13 others, and seeking to recover costs which the United States allegedly has expended in responding  
14 to, preventing, and cleaning up pollution which allegedly occurred at Apra Harbor, Guam, in or  
15 about August and September of 2004.

### 16 FIRST CAUSE OF ACTION

17 (Equitable Indemnity Against Navigators and Al-Buhalera)

18 7. Gargrave refers to and incorporates by reference as though fully set forth herein  
19 each and every foregoing paragraph of this Third-Party Complaint.

20 8. Gargrave denies any liability for the allegations set forth in the Verified  
21 Complaint, and instead alleges that all events and happenings referred to therein were caused and  
22 created by the active negligence and/or intentional willful misconduct and failure to perform  
23 duties and contractual obligations by Navigators and/or Al-Buhalera. Gargrave further asserts  
24 that Al-Buhalera should have responded, in the first instance, to the demand for pollution  
25 response, abatement and cleanup of the United States, and Navigators should have responded  
26 secondarily, as the excess P&I insurer. In the event Gargrave is adjudged liable to the United  
27 States under the Verified Complaint, any fault or liability of Gargrave, which is vigorously  
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1 denied, would be passive in nature and secondary, as opposed to the active and primary fault and  
2 breaches of contract by Al-Buhalera and Navigators.

3 9. If any judgment should be rendered in favor of the United States or others against  
4 Gargrave, Gargrave will be entitled to full indemnification from Al-Buhalera and/or Navigators,  
5 and each of them, and Gargrave is entitled to recover in equitable indemnity from Al-Buhalera  
6 and/or Navigators the full amount of any said judgment, in addition to attorneys' fees and costs.

## 7 **SECOND CAUSE OF ACTION**

8 (Contribution Against Al-Buhalera and Navigators)

9 10. Gargrave refers to and incorporates by reference as though fully set forth herein  
10 each and every foregoing paragraph of this Third-Party Complaint.

11 11. As a direct and proximate result of Al-Buhalera's and Navigators' breaches of  
12 contract and of their respective duties to their insureds, and to others, Gargrave has suffered, or  
13 potentially may suffer, various damages in an amount to be proven at the time of trial.

14 12. As a result of Gargrave's potentially having to pay amounts in excess of its proper  
15 liability, if any, Gargrave is and will be entitled to legal and/or equitable contribution from  
16 Al-Buhalera and/or Navigators, and each of them, for some or all of Gargrave's respective  
17 liabilities.

## 18 **THIRD CAUSE OF ACTION**

19 (Tort of Another Against Al-Buhalera and Navigators)

20 13. Gargrave refers to and incorporates by reference as though fully set forth herein  
21 each and every foregoing paragraph of this Third-Party Complaint.

22 14. Gargrave is informed and believes that Al-Buhalera and Navigators made  
23 misrepresentations and omissions regarding insurance coverage, their respective liabilities at issue  
24 in this proceeding, the condition and state of the vessel, her flag and registry, the type of voyage  
25 she was engaged in, and the extent and nature of her equipment. Gargrave further alleges that  
26 Al-Buhalera and/or Navigators breached their duties under their policies of P&I insurance, and  
27 otherwise. As a direct and proximate result of these negligent and intentional misrepresentations  
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1 and omissions, and breaches of duty and of contract, by Al-Buhalera and Navigators, and each of  
2 them, Gargrave has been compelled to litigate with the United States.

3 15. Gargrave has incurred substantial attorneys' fees and costs in this litigation, and  
4 will continue to incur such fees and costs until the issues involved herein are resolved. Gargrave  
5 is entitled to recover these fees and costs from Al-Buhalera and Navigators, plus full indemnity  
6 for any liability of Gargrave herein, under the doctrine of wrongful act / tort of another.

#### 7 **FOURTH CAUSE OF ACTION**

8 (Misrepresentation Against Navigators)

9 16. Gargrave refers to and incorporates by reference as though fully set forth herein  
10 each and every foregoing paragraph of this Third-Party Complaint.

11 17. Gargrave issued a COFR to the M/V AJMAN 2, pursuant to a request from and an  
12 application submitted by Navigators. That application misrepresented the nature of the risk, the  
13 flag and registry of the vessel, her physical condition, her unseaworthiness, her lack of equipment  
14 and insufficient crew, and the type of voyage in which she was engaged. The misrepresentations  
15 were knowing and intentional when they were made by Navigators. Had Gargrave known the  
16 truth about the M/V AJMAN 2, Gargrave would not have issued a COFR to said vessel.  
17 Accordingly, for the aforesaid reasons, Gargrave is entitled to a declaration that the COFR it  
18 issued to the M/V AJMAN 2 is void, and has no further force and effect. Gargrave is further  
19 entitled to rescind and cancel the COFR issued to the M/V AJMAN 2, and is entitled to money  
20 damages as a result of the misrepresentations by Navigators.

#### 21 **FIFTH CAUSE OF ACTION**

22 (Nondisclosure Against Navigators)

23 18. Gargrave refers to and incorporates by reference as though fully set forth herein  
24 each and every foregoing paragraph of this Third-Party Complaint.

25 19. In its request and application for a COFR made to Gargrave, Navigators failed to  
26 disclose numerous material facts about the M/V AJMAN 2, including her flag and registry, her  
27 physical condition and unseaworthiness, her lack of equipment and inadequate crew, and the  
28 nature of the voyage in which she was engaged. Navigators knew, when it failed to disclose those

1 material facts to Gargrave, that Gargrave had no other source from which to glean that  
2 information.

3 20. As a result of the nondisclosures by Navigators, Gargrave is entitled to a  
4 declaration that the COFR it issued to the M/V AJMAN 2 is void and of no further force and  
5 effect. Gargrave is further entitled to rescind and cancel the COFR. Gargrave is also entitled to  
6 money damages for the intentional nondisclosures by Navigators.

### 7 **SIXTH CAUSE OF ACTION**

8 (Negligence Against Navigators)

9 21. Gargrave refers to and incorporates by reference as though fully set forth herein  
10 each and every foregoing paragraph of this Third-Party Complaint.

11 22. In applying to Gargrave for the COFR, Navigators was negligent in failing to  
12 disclose numerous material facts about the risk, including the flag and registry of the vessel, the  
13 condition of the vessel, her unseaworthiness, her lack of equipment and inadequate crew, and the  
14 nature of the voyage in which she was engaged. In addition, Navigators negligently  
15 misrepresented those material facts, and others, to Gargrave. As a result of the negligence of  
16 Navigators, Gargrave is entitled to rescind the COFR, and to cancel it. Gargrave is also entitled  
17 to a declaration from this Court that the COFR issued to the M/V AJMAN 2 is null and void, and  
18 of no further force and effect. Gargrave is also entitled to money damages for the negligence of  
19 Navigators.

### 20 **DEMAND FOR JUDGMENT IN FAVOR OF PLAINTIFF**

21 23. Pursuant to F.R.C.P. 14(c), Gargrave hereby demands judgment against  
22 Al-Buhalera and Navigators, in favor of plaintiff United States, and further demands that  
23 Al-Buhalera and Navigators answer and make any defenses to the claims of the United States, as  
24 set forth in the Verified Complaint, directly, as well as to the claims of Gargrave.

### 25 **PRAYER**

26 WHEREFORE, Third-Party Plaintiff Gargrave prays for judgment as follows:  
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1           1.       For full and complete indemnification from the Third-Party Defendants, and each  
2 of them, jointly and severally, in the event Gargrave is held liable in the principal action herein,  
3 or in the event Gargrave makes any settlement with the plaintiff United States herein;

4           2.       For contribution from the Third-Party Defendants, and each of them, jointly and  
5 severally, in the event Gargrave is held liable in the principal action herein, or in the event  
6 Gargrave makes any settlement with the plaintiff United States herein;

7           3.       For a judgment pursuant to the provisions of F.R.C.P. 14(c) directly against the  
8 Third-Party Defendants, and each of them, jointly and severally, in favor of the plaintiff United  
9 States, and for the Third-Party Defendants, and each of them, to make their defenses and answers  
10 directly to the claims of the United States, as well as to the claims herein of Third-Party Plaintiff  
11 Gargrave;

12           4.       For judgment against the Third-Party Defendants, jointly and severally, for  
13 Gargrave's costs, expenses and reasonable attorneys' fees incurred in defense of the United  
14 States' Verified Complaint and other pleadings; and

15           5.       For such other and further relief as this Court may deem just and proper.

16       Dated this 24<sup>th</sup> day of July, 2006.

17                               TARPLEY & MORONI, LLP

18  
19       By: 

20                               THOMAS M. TARPLEY, JR.,  
21                               Attorney for Defendant  
22                               S.J. GARGRAVE SYNDICATE 2724,  
23                               *in personam*  
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**CERTIFICATE OF SERVICE**

I, Thomas M. Tarpley, Jr., hereby certify pursuant to Rule 5(d) Fed. R. Civ. P. that on July 24, 2006, I caused to be served a true and correct copy of the **THIRD-PARTY COMPLAINT OF S.J. GARGRAVE SYNDICATE 2724**, to the following:

R. Michael Underhill, Esq.  
c/o Mikel W. Schwab, Esq.  
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*Attorneys for Intervenor Inchcape Shipping Services Guam, LLC*

Dated this 24<sup>th</sup> day of July, 2006.

TARPLEY & MORONI, LLP

By: 

THOMAS M. TARPLEY, JR.,  
Attorney for Defendant  
S.J. GARGRAVE SYNDICATE 2724,  
*in personam*